

By: Senator(s) Nunnelee

To: Public Health and Welfare

SENATE BILL NO. 2415

1 AN ACT TO BRING FORWARD SECTIONS 73-14-1 THROUGH 73-14-47,  
2 MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR THE LICENSURE AND  
3 REGULATION OF HEARING AID SPECIALISTS BY THE STATE BOARD OF  
4 HEALTH; TO REPEAL SECTION 73-14-49, MISSISSIPPI CODE OF 1972,  
5 WHICH PROVIDES AN AUTOMATIC REPEALER ON SAID STATUTES; AND FOR  
6 RELATED PURPOSES.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

8 **SECTION 1.** Section 73-14-1, Mississippi Code of 1972, is  
9 brought forward as follows:

10 73-14-1. The State Board of Health established and empowered  
11 by Section 41-3-1 et seq., Mississippi Code of 1972, shall  
12 discharge as additional duties and responsibilities the provisions  
13 of this chapter in the examination, licensing and regulation of  
14 persons who sell and fit hearing aids and who test hearing while  
15 engaged in the selling and fitting of hearing aids.

16 **SECTION 2.** Section 73-14-3, Mississippi Code of 1972, is  
17 brought forward as follows:

18 73-14-3. The following definitions apply as used in this  
19 chapter, unless the context otherwise requires:

20 (a) The "board" means the Mississippi State Board of  
21 Health.

22 (b) "License" includes a temporary license.

23 (c) "Hearing aid" shall mean any wearable instrument or  
24 device designed for or offered for the purpose of aiding or  
25 compensating for impaired human hearing and any parts,  
26 attachments, or accessories, including ear molds, but excluding  
27 such things as telephone devices, batteries and cords.

28           (d) "Hearing aid specialist" means an individual  
29 licensed by the board to engage in the practice of dispensing and  
30 fitting hearing aids.

31           (e) "Practice of dispensing and fitting hearing aids"  
32 means the evaluation or measurement of powers or range of human  
33 hearing by means of an audiometer and the consequent selection or  
34 adaptation or sale of hearing aids intended to compensate for  
35 hearing loss, including the making of an impression of the ear.

36           (f) "Sell" or "sale" means any transfer of title or of  
37 the right to use by lease, bailment, or any other contract,  
38 excluding wholesale transactions with distributors or dealers.

39           (g) "Unethical conduct" means:

40               (i) The obtaining of any fee or the making of any  
41 sale by fraud or misrepresentation.

42               (ii) Knowingly employing directly or indirectly  
43 any suspended or unlicensed person to perform any work covered by  
44 this chapter.

45               (iii) Representing that the professional services  
46 or advice of a physician or audiologist will be used or made  
47 available in the selling, fitting, adjustment, maintenance or  
48 repair of hearing aids when that is not true, or using the words  
49 "doctor," "clinic," "clinical," and/or "research audiologist,"  
50 "audiologic," or any other like words, abbreviations or symbols  
51 which tend to connote audiological or professional services, when  
52 such use is not accurate.

53               (iv) Permitting another to use his license or  
54 certificate or endorsement.

55               (v) Quoting prices of competitive hearing aids or  
56 devices without disclosing that they are not the present current  
57 prices, or showing, demonstrating, or representing competitive  
58 models as being current models when such is not the fact.

59               (vi) Imitating or simulating the trademarks, trade  
60 names, brands or labels of competitors with the capacity and

61 tendency or effect of misleading or deceiving purchasers or  
62 prospective purchasers.

63 (vii) Defaming competitors by falsely imputing to  
64 them dishonorable conduct, inability to perform contracts,  
65 questionable credit standing, or by other false representations,  
66 or falsely disparaging the products of competitors in any respect,  
67 or their business methods, selling prices, values, credit terms,  
68 policies or services.

69 (viii) Stating or implying that the use of any  
70 hearing aid will restore or preserve hearing, prevent or retard  
71 progression of a hearing impairment.

72 (ix) Dispensing and selling a hearing aid to a  
73 child under the age of eighteen (18) years who has not been  
74 examined and cleared for hearing aid use by a licensed physician  
75 within a six-month period immediately prior to dispensing and  
76 selling the hearing aid.

77 (x) Representing himself as being an audiologist  
78 as defined in Section 73-38-3.

79 **SECTION 3.** Section 73-14-5, Mississippi Code of 1972, is  
80 brought forward as follows:

81 73-14-5. (1) This chapter is not intended to prevent any  
82 person from engaging in the practice of measuring human hearing  
83 for the purpose of selection of hearing aids, provided such person  
84 or organization employing such person does not sell hearing aids  
85 or accessories thereto, except in the case of ear molds to be used  
86 only for the purpose of audiologic evaluation.

87 (2) This chapter shall not apply to any physician or surgeon  
88 licensed by the State of Mississippi.

89 (3) This chapter does not apply to a person while he is  
90 engaged in the fitting of hearing aids, provided it is part of the  
91 academic curriculum of an accredited institution of higher  
92 education or part of a program conducted by a public tax-supported  
93 institution or agency or nonprofit organization, unless such

94 person or institution or agency sells hearing aids, and/or  
95 accessories, except ear molds.

96 **SECTION 4.** Section 73-14-7, Mississippi Code of 1972, is  
97 brought forward as follows:

98 73-14-7. (1) The powers and duties of the Mississippi State  
99 Board of Health under this chapter are as follows:

100 (a) To authorize all disbursements necessary to carry  
101 out the provisions of this chapter.

102 (b) To supervise and administer qualifying examinations  
103 to test the knowledge and proficiency of applicants for a license.

104 (c) To license persons who apply to the board and who  
105 are qualified to practice the fitting, dispensing and selling of  
106 hearing aids.

107 (d) To purchase and maintain or rent audiometric  
108 equipment and facilities necessary to carry out the examination of  
109 applicants for license.

110 (e) To issue and renew licenses.

111 (f) To suspend or revoke licenses pursuant to this  
112 chapter.

113 (g) To appoint representatives to conduct or supervise  
114 the examining of applicants for license.

115 (h) To designate the time and place for examining  
116 applicants for license.

117 (i) To make and publish rules and regulations not  
118 inconsistent with the laws of this state which are necessary to  
119 carry out the provisions of this chapter, in compliance with the  
120 provisions of Section 25-43-1 et seq., Mississippi Code of 1972,  
121 which is the Administrative Procedures Law.

122 (j) To require the periodic inspection and calibration  
123 of audiometric testing equipment and to carry out the periodic  
124 inspection of facilities of persons who practice the fitting or  
125 selling of hearing aids.

126           (k) To establish minimum requirements of test  
127 procedures and test equipment to be used in the fitting of hearing  
128 aids pursuant to this chapter, also the retention of all fittings  
129 and records of fittings by the dealer.

130           (2) The Hearing Aid Advisory Council appointed pursuant to  
131 Section 73-14-7 is hereby continued and reconstituted as follows:

132           The council shall consist of seven (7) members, four (4) of  
133 whom are licensed hearing aid specialists who do not currently  
134 hold any other professional license regulated by the State Board  
135 of Health, one (1) of whom is a licensed audiologist, one (1) of  
136 whom is a licensed physician, board certified in otolaryngology,  
137 and one (1) of whom is a person of the board's own choosing from  
138 the state at large, and said person shall be hearing impaired.  
139 The person of the board's choosing shall not be a member of nor  
140 have personal interest in any organization associated with hearing  
141 aid specialists.

142           No person shall serve more than two (2) full consecutive  
143 terms. No more than three (3) members shall be appointed to said  
144 council from any one (1) Supreme Court district. The hearing aid  
145 specialist appointments may be made from a list of at least three  
146 (3) licensed hearing aid specialists furnished by the Mississippi  
147 Hearing Aid Dealer Association, or its successor, for each vacancy  
148 on the council, who have practiced and resided for three (3) years  
149 in the state. The audiologist appointment may be made from a list  
150 of at least three (3) licensed audiologists furnished by the  
151 Mississippi Speech and Hearing Association, who has practiced and  
152 resided for three (3) years in the state. The licensed physician  
153 appointment may be made from a list of at least three (3) board  
154 certified otolaryngologists furnished by the Mississippi Eye, Ear,  
155 Nose and Throat Association, who has practiced and resided for  
156 three (3) years in the state. Appointments to the council to fill  
157 a vacancy occurring for other than expiration of a term shall only  
158 be made for the remainder of the expired term. The council shall

159 promulgate such rules and regulations by which it shall conduct  
160 its business. Members of the council shall receive no salary for  
161 services performed on the council but may be reimbursed for their  
162 reasonable and necessary actual expenses incurred in the  
163 performance of the same, from funds provided for such purpose.  
164 The council shall assist and advise the board in the development  
165 of regulations and standards governing the licensure of hearing  
166 aid dealers. Council members may be removed from office if found  
167 guilty of any violation of any provision of this chapter. A  
168 council member subject to formal disciplinary proceedings shall  
169 disqualify himself from any council business until the charge is  
170 resolved. A member must also disqualify himself from any council  
171 business on which he may not make an objective evaluation and/or  
172 decision.

173       **SECTION 5.** Section 73-14-13, Mississippi Code of 1972, is  
174 brought forward as follows:

175       73-14-13. Any person who practices the fitting or dispensing  
176 of hearing aids shall deliver to each person supplied with a  
177 hearing aid, by him or at his order or direction, a bill of sale  
178 which shall contain his signature and show the address of his  
179 regular place of practice and the number of his license, together  
180 with a description of the make and model of the hearing aid  
181 furnished, the serial number of the hearing aid furnished, and the  
182 amount charged therefor. The bill of sale shall also reveal the  
183 condition of the hearing device and whether it is new, used or  
184 rebuilt.

185       **SECTION 6.** Section 73-14-15, Mississippi Code of 1972, is  
186 brought forward as follows:

187       73-14-15. No person shall engage in the sale or practice of  
188 dispensing and fitting hearing aids or display a sign or in any  
189 other way advertise or hold himself out as a person who practices  
190 the dispensing and fitting of hearing aids unless he holds a  
191 current, unsuspended, unrevoked license by the board as provided

192 in this chapter. The license required by this section shall be  
193 kept conspicuously posted in his office or place of business at  
194 all times.

195 **SECTION 7.** Section 73-14-17, Mississippi Code of 1972, is  
196 brought forward as follows:

197 73-14-17. An applicant for a license shall pay a fee of One  
198 Hundred Dollars (\$100.00) and shall show to the satisfaction of  
199 the board that he:

200 (a) Is twenty-one (21) years of age or older.

201 (b) Has an education equivalent to a four-year course  
202 in an accredited high school.

203 No governmental entity or agency shall be required to pay the  
204 fee or fees set forth in this section.

205 Each application or filing made under this section shall  
206 include the social security number(s) of the applicant in  
207 accordance with Section 93-11-64, Mississippi Code of 1972.

208 **SECTION 8.** Section 73-14-19, Mississippi Code of 1972, is  
209 brought forward as follows:

210 73-14-19. An applicant for a license who is notified by the  
211 board that he has fulfilled the requirements of Section 73-14-17  
212 and upon paying a testing fee determined by the department as  
213 necessary to cover the expense of the administration of the  
214 examination not to exceed One Hundred Fifty Dollars (\$150.00),  
215 shall appear at a time, place and before such persons as the board  
216 may designate, to be examined by written and practical test in  
217 order to demonstrate that he is qualified to practice the fitting,  
218 dispensing and selling of hearing aids.

219 **SECTION 9.** Section 73-14-21, Mississippi Code of 1972, is  
220 brought forward as follows:

221 73-14-21. The examination provided in Section 73-14-19 shall  
222 be selected by the board, with advice of the council, and may also  
223 include an oral examination at the discretion of the board. The  
224 tests under this section shall not include questions requiring a

225 medical or surgical education. It is the intent of this section  
226 that the exams administered under this chapter be of such a level  
227 as to provide that at a minimum an individual having a high school  
228 education or its equivalent and with appropriate study, training  
229 and supervision under the direction of a qualified hearing aid  
230 specialist should be able to pass.

231 **SECTION 10.** Section 73-14-23, Mississippi Code of 1972, is  
232 brought forward as follows:

233 73-14-23. The board shall register each applicant who  
234 satisfactorily passes the examination and then issue such  
235 applicant a license. The license shall be effective until July 1  
236 next following issuance.

237 **SECTION 11.** Section 73-14-25, Mississippi Code of 1972, is  
238 brought forward as follows:

239 73-14-25. The department may license as a hearing aid  
240 specialist, and furnish a certificate of licensure, to any  
241 applicant who presents evidence, satisfactory to the department of  
242 having passed an examination before a similar lawfully authorized  
243 examining agency or board of hearing aid specialists of another  
244 state or the District of Columbia, if the standards for  
245 registration of hearing aid specialists or for licensure as a  
246 hearing aid specialist in such state or district are determined by  
247 the department to be as high as those of this state, and if that  
248 jurisdiction affords licensees of this state reciprocity.

249 Any person making application for licensure under the  
250 provisions of this section may, at the discretion of the board, be  
251 required to pass an examination selected by the board.

252 **SECTION 12.** Section 73-14-27, Mississippi Code of 1972, is  
253 brought forward as follows:

254 73-14-27. (1) An applicant who fulfills the requirements of  
255 Section 73-14-17 and who has not previously applied to take the  
256 examination provided under Section 73-14-19 may apply to the board  
257 for a temporary license.



258           (2) Upon receiving an application provided under subsection  
259 (1) of this section, the board shall issue a temporary license  
260 which shall entitle the applicant to practice the fitting and  
261 dispensing of hearing aids for a period ending thirty (30) days  
262 after the conclusion of the next examination given after the date  
263 of issue.

264           (3) No temporary license shall be issued by the board under  
265 this section unless the applicant shows to the satisfaction of the  
266 board that he is or will be supervised and trained by a person  
267 who:

268                   (a) Holds a current and valid document of being  
269 National Board Certified in Hearing Instrument Sciences by the  
270 International Hearing Society (IHS) or its successor; or

271                   (b) Holds a current and valid Certificate of Clinical  
272 Competence in Audiology from the American Speech-Language-Hearing  
273 Association (ASHA); or

274                   (c) Has had a minimum of three (3) years' experience in  
275 the testing of hearing, fitting of hearing aids and dispensing of  
276 hearing aids.

277           (4) If a person who holds a temporary license issued under  
278 this section does not take the next examination given after the  
279 date of issue, the temporary license shall not be renewed, except  
280 for good cause shown to the satisfaction of the board.

281           (5) If a person who holds a temporary license issued under  
282 this section takes and fails to pass the next examination given  
283 after the date of issue, the board may renew the temporary license  
284 for a period ending thirty (30) days after the date of renewal is  
285 announced. In no event shall more than one (1) renewal be  
286 permitted. The fee for renewal shall be Fifty Dollars (\$50.00).

287           **SECTION 13.** Section 73-14-31, Mississippi Code of 1972, is  
288 brought forward as follows:

289           73-14-31. A person who practices the fitting and dispensing  
290 of hearing aids shall biennially pay to the board a fee of Two

291 Hundred Dollars (\$200.00) for a renewal of his license. A grace  
292 period of thirty (30) days shall be allowed after the expiration  
293 of a license, during which the same may be renewed on payment of a  
294 fee of Two Hundred Dollars (\$200.00) to the board. The license of  
295 any person who fails to have his license renewed by the expiration  
296 of the grace period of thirty (30) days shall be considered to  
297 have lapsed. After the expiration of the grace period, the board  
298 may reinstate a license upon payment of a fee of Two Hundred Fifty  
299 Dollars (\$250.00) to the board. No person who applies for  
300 reinstatement, whose license was suspended for the sole reason of  
301 failure to renew, shall be required to submit to any examination  
302 as a condition of reinstatement, provided such person applies for  
303 reinstatement within one (1) year from the date of lapse of the  
304 license.

305 The board shall require the applicant for license renewal to  
306 present evidence of the satisfactory completion of continuing  
307 education requirements as determined by the board.

308 In the event that any licensee shall fail to meet the annual  
309 educational requirement, his license shall not be renewed by the  
310 board, but the board may renew the license upon the presentation  
311 of satisfactory evidence of educational study of a standard  
312 approved by the board and upon the payment of all fees due. No  
313 governmental entity or agency shall be required to pay the fee or  
314 fees set forth in this section.

315 **SECTION 14.** Section 73-14-33, Mississippi Code of 1972, is  
316 brought forward as follows:

317 73-14-33. A person who holds a license or temporary license  
318 shall notify the board in writing of the address of the place or  
319 places where he engages or intends to engage in the practice of  
320 fitting or dispensing of hearing aids.

321 The board shall keep a record of the places of practice of  
322 persons who hold licenses or temporary licenses. Any notice  
323 required to be given by the board to a person who holds a license

324 or temporary license may be given by mailing it to him at the  
325 address given by him to the board.

326 A person who holds a license or temporary license to practice  
327 as a hearing aid specialist in this state but whose principal  
328 place of business is not in this state shall certify to the board  
329 that they will:

330 (a) Display their Mississippi license while conducting  
331 business in Mississippi; and

332 (b) Shall make all records regarding clients who are  
333 residents of Mississippi available to the licensing authority  
334 within seventy-two (72) hours of receiving such a request in  
335 writing.

336 Failure to comply with the requirements of (a) or (b) above  
337 shall constitute grounds for disciplinary action under the  
338 provisions of this chapter and/or rules and regulations  
339 promulgated pursuant to this chapter.

340 **SECTION 15.** Section 73-14-35, Mississippi Code of 1972, is  
341 brought forward as follows:

342 73-14-35. (1) Any person registered under this chapter may  
343 have his license or certificate revoked or suspended for a fixed  
344 period to be determined by the board for any of the following  
345 causes:

346 (a) Being convicted of an offense involving moral  
347 turpitude. The record of such conviction, or certified copy  
348 thereof from the clerk of the court where such conviction occurred  
349 or by the judge of that court, shall be sufficient evidence to  
350 warrant revocation or suspension.

351 (b) By securing a license or certificate under this  
352 chapter through fraud or deceit.

353 (c) For unethical conduct or for gross ignorance or  
354 inefficiency in the conduct of his practice.

355 (d) For knowingly practicing while suffering with a  
356 contagious or infectious disease.

357 (e) For the use of a false name or alias in the  
358 practice of his profession.

359 (f) For violating any of the provisions of this chapter  
360 or any rules or regulations promulgated pursuant to this chapter.

361 (g) For violating the provisions of any applicable  
362 federal laws or regulations.

363 (h) Discipline by another jurisdiction if at least one  
364 (1) of the grounds for the discipline is the same or substantially  
365 equivalent to those set forth in this chapter or rules and  
366 regulations promulgated pursuant to this chapter.

367 (2) In addition to the causes specified in subsection (1) of  
368 this section, the board shall be authorized to suspend the license  
369 of any licensee for being out of compliance with an order for  
370 support, as defined in Section 93-11-153. The procedure for  
371 suspension of a license for being out of compliance with an order  
372 for support, and the procedure for the reissuance or reinstatement  
373 of a license suspended for that purpose, and the payment of any  
374 fees for the reissuance or reinstatement of a license suspended  
375 for that purpose, shall be governed by Section 93-11-157 or  
376 93-11-163, as the case may be. If there is any conflict between  
377 any provision of Section 93-11-157 or 93-11-163 and any provision  
378 of this chapter, the provisions of Section 93-11-157 or 93-11-163,  
379 as the case may be, shall control.

380 **SECTION 16.** Section 73-14-37, Mississippi Code of 1972, is  
381 brought forward as follows:

382 73-14-37. (1) Any person, whose license is sought to be  
383 revoked under the provisions of this chapter, shall be given  
384 thirty (30) days' notice, in writing, enumerating the charges and  
385 specifying a date for public hearing thereon. The hearing shall  
386 be held in the county where the person's business is conducted.  
387 The board may issue subpoenas, compel the attendance and testimony  
388 of witnesses, and place them under oath, the same as any court of  
389 competent jurisdiction where the hearing takes place.

390 (2) At all hearings the board may designate in writing one  
391 or more persons deemed competent by the board to conduct the  
392 hearing as trial examiner or trial committee, with the decision to  
393 be rendered in accordance with the provisions of subsection (3) of  
394 this section.

395 (3) After a hearing has been completed the trial examiner or  
396 trial committee who conducted the hearing shall proceed to  
397 consider the case and, as soon as practicable, shall render a  
398 decision. In any case, the decision must be rendered within sixty  
399 (60) days after the hearing. The decision shall contain:

400 (a) The findings of fact made by the trial examiner or  
401 trial committee;

402 (b) Conclusions of law reached by the trial examiner or  
403 trial committee; and

404 (c) The order based upon these findings of fact and  
405 conclusions of law.

406 **SECTION 17.** Section 73-14-39, Mississippi Code of 1972, is  
407 brought forward as follows:

408 73-14-39. (1) From any revocation, the person charged may,  
409 within thirty (30) days thereof, appeal to the chancery court of  
410 the county of the residence of the licensee.

411 (2) Notice of appeals shall be filed in the office of the  
412 clerk of the court, who shall issue a writ of certiorari directed  
413 to the board, commanding it within ten (10) days after service  
414 thereof to certify to such court its entire record in the matter  
415 in which the appeal has been taken. The appeal shall thereupon be  
416 heard in the due course by said court without a jury, and the  
417 court shall review the record and make its determination of the  
418 cause between the parties.

419 (3) Any order, rule or decision of the board shall not take  
420 effect until after the time of appeal in the said court shall have  
421 expired. If there is an appeal, such appeal may, in the  
422 discretion of and on motion to the chancery court, act as a

423 supersedeas. The chancery court shall dispose of the appeal and  
424 enter its decision promptly. The hearing on the appeal may, in  
425 the discretion of the chancellor, be tried in vacation.

426 (4) Any person taking an appeal shall post a satisfactory  
427 bond in the amount of Two Hundred Dollars (\$200.00) for payment of  
428 any costs which may be adjudged against him.

429 (5) Actions taken by the board in suspending a certificate  
430 of registration when required by Section 93-11-157 or 93-11-163  
431 are not actions from which an appeal may be taken under this  
432 section. Any appeal of a suspension of a certificate that is  
433 required by Section 93-11-157 or 93-11-163 shall be taken in  
434 accordance with the appeal procedure specified in Section  
435 93-11-157 or 93-11-163, as the case may be, rather than the  
436 procedure specified in this section.

437 **SECTION 18.** Section 73-14-41, Mississippi Code of 1972, is  
438 brought forward as follows:

439 73-14-41. No person may:

440 (a) Sell, barter or offer to sell or barter a license.

441 (b) Purchase or procure by barter a license with intent  
442 to use it as evidence of the holder's qualifications to practice  
443 the fitting and dispensing of hearing aids.

444 (c) Alter materially a license with fraudulent intent.

445 (d) Use or attempt to use as a valid license one which  
446 has been purchased, fraudulently obtained, counterfeited or  
447 materially altered.

448 (e) Willfully make a false material statement in an  
449 application for registration or for renewal of a license.

450 **SECTION 19.** Section 73-14-43, Mississippi Code of 1972, is  
451 brought forward as follows:

452 73-14-43. Violation of any provision of this chapter is a  
453 misdemeanor punishable upon conviction by a fine of not less than  
454 One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars

455 (\$500.00), or by imprisonment for not more than ninety (90) days  
456 in the county jail, or by both.

457 **SECTION 20.** Section 73-14-45, Mississippi Code of 1972, is  
458 brought forward as follows:

459 73-14-45. The board may enforce any provisions of this  
460 chapter by injunction or by any other appropriate proceeding. No  
461 such proceeding shall be barred by any proceeding had or pending  
462 pursuant to any other section of this chapter, and the authority  
463 conferred in this chapter is in addition to and supplementary to  
464 any other statute, civil or criminal, dealing with the subject  
465 matters herein and the institution and prosecution of any action  
466 shall not preclude the institution and prosecution under other  
467 appropriate civil or criminal statutes dealing therewith.

468 **SECTION 21.** Section 73-14-47, Mississippi Code of 1972, is  
469 brought forward as follows:

470 73-14-47. All fees and monies received by the board under  
471 this chapter shall be deposited in a special fund hereby created  
472 in the State Treasury and shall be used for the implementation and  
473 administration of this chapter when appropriated by the  
474 Legislature for such purpose.

475 **SECTION 22.** Section 73-14-49, which provides an automatic  
476 repealer on those statutes which provide for the licensure and  
477 regulation of hearing aid specialists by the State Board of  
478 Health, is hereby repealed.

479 **SECTION 23.** This act shall take effect and be in force from  
480 and after June 30, 2005.